MARK TITCH
NAME
B-89549, F1-04-227
PRISON NUMBER & Housing Number

P.O. Box 799001
CURRENT ADDRESS OR PLACE OF CONFINEMENT

San Diego, Ca 92179-9001
CITY, STATE, ZIP CODE

2254 ✓ 1983
FILING FEE PAID
Yes ____ No ✓
IFP MOTION FILED
Yes ____ No ✓
COPIES SENT TO
Court ✓ ProSe ____

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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARK TITCH,
(FULL NAME OF PETITIONER)
PETITIONER, Pro Se

V.

ROBERT HERNANDEZ, Warden RJDCF et.al.,
(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS])
RESPONDENT

and

EDMOND G. BROWN,
The Attorney General of the State of California, Additional Respondent.

Civil No. '08 CV 0654 J WMc
(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack: I'm not attacking my conviction. I'm challenging the decision of my 2006 parole hearing.
2. Date of judgment of conviction: ORANGE COUNTY: 10/17/77; SAN DIEGO: March/April 1978.
3. Trial court case number of the judgment of conviction ~~being challenged:~~ ORANGE COUNTY: Case #C37693; SAN DIEGO, Case #CR42845.
4. Length of sentence: 7-to-life with all counts to run concurrent.

5. Sentence start date and projected release date: January 1, 1978. I currently should not be in custody. The parole board did not set term as it should have at my 2006 parole hearing.

6. Offense(s) for which you were convicted or pleaded guilty (all counts): Murder 1st (2 cts.); Kidnapping for Robbery; Armed Robbery w/firearm (5 cts.); Burglary (3 cts.); ADW on Peace Officer w/firearm.

7. What was your plea? (CHECK ONE)
   (a) Not guilty ☐
   (b) Guilty ☒
   (c) Nolo contendere ☐

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
   (a) Jury ☐
   (b) Judge only ☐

9. Did you testify at the trial?
   ☐ Yes ☐ No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the **California Court of Appeal**?
    ☐ Yes ☒ No

11. If you appealed in the **California Court of Appeal**, answer the following:
    (a) Result: _____
    (b) Date of result, case number and citation, if known: _____
    (c) Grounds raised on direct appeal: _____

12. If you sought further direct review of the decision on appeal by the **California Supreme Court** (e.g., a Petition for Review), please answer the following:
    (a) Result: _____
    (b) Date of result, case number and citation, if known: _____
    (c) Grounds raised: _____

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

(a) Result: _____

(b) Date of result, case number and citation, if known: _____

_____

(c) Grounds raised: _____

_____

_____

_____

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?

☐ Yes ☒ No

15. If your answer to #14 was "Yes," give the following information:

(a) California Superior Court Case Number: _____

(b) Nature of proceeding: _____

_____

(c) Grounds raised: _____

_____

_____

_____

(d) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☐ No

(e) Result: _____

(f) Date of result: _____

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?

☐ Yes ☒ No

17. If your answer to #16 was "Yes," give the following information:

(a) **California Court of Appeal** Case Number: _____

(b) Nature of proceeding: _____

_____

(c) Grounds raised: _____

_____

_____

_____

(d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No

(e) Result: _____

(f) Date of result: _____

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Supreme Court**?
☐ Yes ☒ No

19. If your answer to #18 was "Yes," give the following information:

(a) **California Supreme Court** Case Number: _____

(b) Nature of proceeding: _____

_____

(c) Grounds raised: _____

_____

_____

_____

_____

(d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No

(e) Result: _____

(f) Date of result: _____

20. If you did *not* file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the California Supreme Court, containing the grounds raised in this federal Petition, explain briefly why you did not:

_____

_____

_____

_____

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your **first** federal petition for writ of habeas corpus challenging this ~~conviction~~ hearing?

☒ Yes ☐ No (IF "YES" SKIP TO #22)

(a) If no, in what federal court was the prior action filed? _____

(i) What was the prior case number? _____

(ii) Was the prior action (CHECK ONE):

☐ Denied on the merits?

☐ Dismissed for procedural reasons?

(iii) Date of decision: _____

(b) Were any of the issues in this current petition also raised in the prior federal petition?

☐ Yes ☐ No

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

☐ Yes ☐ No

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present *all* other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

GROUNDS FOR RELIEF

22. **State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground.** If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE**: SEE ATTACHED PETITION

Supporting FACTS (state *briefly* without citing cases or law) SEE ATTACHED PETITION

Did you raise GROUND ONE in the California Supreme Court?

☒ Yes ☐ No.

(b) GROUND TWO: _____

SEE ATTACHED PETITION

Supporting FACTS (state *briefly* without citing cases or law): SEE ATTACHED PETITION

Did you raise GROUND TWO in the California Supreme Court?

☒ Yes ☐ No.

(c) GROUND THREE: _____

SEE ATTACHED PETITION

Supporting FACTS (state *briefly* without citing cases or law): SEE ATTACHED PETITION

Did you raise GROUND THREE in the California Supreme Court?

☒ Yes ☐ No.

(d) **GROUND FOUR**: _____

Supporting FACTS (state *briefly* without citing cases or law): _____

Did you raise GROUND FOUR in the California Supreme Court?

☐ Yes ☐ No.

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?

☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court: _____

(b) Case Number: _____

(c) Date action filed: _____

(d) Nature of proceeding: _____

_____

(e) Grounds raised: _____

_____

_____

_____

_____

(f) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☐ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing: N/A

_____

(b) At arraignment and plea: N/A

_____

(c) At trial: N/A

_____

(d) At sentencing: N/A

_____

(e) On appeal: N/A

(f) In any post-conviction proceeding: N/A

_____

(g) On appeal from any adverse ruling in a post-conviction proceeding: N/A

_____

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
☒ Yes ☐ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

_____

(b) Give date and length of the future sentence: _____

_____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
☐ Yes ☐ No

28. Date you are mailing (or handing to a correctional officer) this Petition to this court: _____
April 8, 2008

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

_____
SIGNATURE OF ATTORNEY (IF ANY)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

4/8/08 Mark W. Titch

(DATE) SIGNATURE OF PETITIONER

Mark Titch
B-89549, F1-04-227
P.O. Box 799001
San Diego, Ca 92179-9001

Petitioner, Pro Se

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MARK TITCH,
Petitioner, Pro Se

vs.

ROBERT HERNANDEZ,
Warden, RJDCF et.al.

Respondents

Case No._____

PETITION FOR WRIT OF HABEAS CORPUS (UNDER 28 U.S.C. §2254)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES (CONT'D)

Federal Case Law:

TABLE OF EXHIBITS

TABLE OF EXHIBITS

TABLE OF EXHIBITS

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Case No._____

PETITION FOR WRIT OF HABEAS CORPUS (UNDER 28 U.S.C. §2254)

INTRODUCTION

Petitioner, Mark Titch, hereby submits the foregoing **Petition For Writ Of Habeas Corpus**, alleging that the Board of Parole Hearings (hereafter the "Board") has violated his constitutional right to Due Process as guaranteed by both state and federal Constitutions (Cal. Const.: Article I, Section 7, subdiv.(a); Fed. Const.: Fourteenth Amendment).

In 1977, petitioner pled guilty in Orange County to two counts of first degree murder, one count of kidnapping for purpose of robbery, five counts of armed robbery with use of firearm, and three counts of burglary (Exhibits 3

and 4). Additionally, in 1978, petitioner pled guilty in San Diego to assault with a deadly weapon on a peace officer with use of a firearm (Exhibit 6, p.2). For these offenses, petitioner received a 7-to-life sentence with all counts to run concurrent (Exhibits 3, 4, and 6).

A summary of petitioner's offenses may be found in Exhibits 13 and 52. The court should also consult Exhibits 2 through 4; Exhibit 5, pp. 2-5; Exhibit 6, p.9; and Exhibits 8 through 11. Petitioner disagrees with the Orange County District Attorney's 1203.01 statement on the grounds that it's either inaccurate or misleading (Exhibit 7); disagrees with the CDC Cumulative Case Summary to the extent that it incorporates the D.A.'s 1203.01 statements and lists them under the heading "CYA Facts" (Exhibit 6); and disagrees with the summaries of his offenses as given in his 2003 Life Prisoner Evaluation Report (Exhibit 14). With respect to the 2003 report, in fact, petitioner filed a CDC 602 appeal and a BPT 1040 appeal opposing it (Exhibits 17 and 18) which the court should also consult as both provide additional clarification concerning petitioner's admissions about his crimes.

There are other discrepancies in the record which petitioner feels need to be clarified as well. In petitioner's 1983 Board decision, the Board stated petitioner admitted shooting Laura Stoughton twice in the face while she was holding a rosary and praying for her life (Exhibit 35, p.13). This is not true. Petitioner has always been advised by his state appointed lawyers representing him during his Board hearings not to dispute the facts of his case or else the Board would perceive petitioner as denying responsibility for his actions. Hence, petitioner's silence about the record, or lack of opposition to it, was probably taken by the Board as an admission of guilt, not that petitioner actually admitted to them.

In petitioner's 1986 mental health evaluation, Dr. Brandmeyer states that petitioner was in agreement with the D.A.'s 1203.01 statement, except

where the D.A. said that petitioner should never get out of prison (Exhibit 26, p.1). Again, this is not true. As Dr. Brandmeyer stated, in fact, petitioner complained about an "R" being placed in his jacket (Id.). The "R" designation was placed on petitioner's custody in lieu of the D.A.'s statement that petitioner's crime partner, Brett Thomas, said petitioner attempted to rape Laura Stoughton. Hence, petitioner was clearly not in agreement with the D.A.'s statement.

Finally, in the CYA Referral Report, it's stated that petitioner's father reported that petitioner (when he was a juvenile) fired a gun at another boy with the intent to kill him (Exhibit 5, p.11). Apparently, this incident is in reference to petitioner's arrest for assault with intent to commit murder which petitioner discussed with the Board during the hearing (Exhibit 46, pp.26-29). Although petitioner does not know why his father may have believed this story, petitioner only fired a gun in the air to stop the boy's father (not the boy) from pursuing him. As petitioner told the Board, in fact, the charge of assault with intent to commit murder was dismissed (Exhibit 46, p.26).

Under a 7-to-life sentence, the term is not to be set by the trial court but is to be determined by the California Board of Parole Hearings (or Board). The primary statutes and regulations governing the Board's parole suitability hearings are Penal Codes §§3041(a) and 3041(b) as well as the California Code of Regulations, Title 15, Division 2 (see In re Rosenkrantz (2002) 128 Cal. Rptr.2d 114, pp.137-138).

Petitioner attended his initial parole hearing in 1983 and was denied parole. Petitioner had subsequent parole hearings in 1986, 1989, 1992, 1995, 1998, 2001, 2003, and 2006 with the same result. In the foregoing writ, petitioner challenges the Board's decision at his 2006 hearing, alleging

1) The Board failed to follow its own rules and regulations in determining petitioner's suitability for parole;

2) The Board's decision is arbitrary and capricious because it is unsupported by any evidence, inapposite to the record, and lacks a rational nexus between the factors cited and petitioner's current parole risk; and

3) The Board's continual denial of petitioner's parole, based on unchanging, static factors and contrary to substantial change for the better, illegally converts petitioner's term of life with the possibility of parole to life without the possibility of parole.

Based on these grounds, petitioner believes the Board has violated his due process rights as guaranteed by both state and federal constitutions.

I. THE PARTIES.

MARK TITCH is the petitioner, represented pro se, and is currently incarcerated at the Richard J. Donovan Correctional Facility in San Diego, California.

ROBERT HERNANDEZ is the warden of the Richard J. Donovan Correctional Facility and currently has legal custody of petitioner.

JAMES DAVIS is the chairman of the Board of Parole Hearings, the agency responsible for administering petitioner's 7-to-life sentence.

II. EXHAUSTION OF ADMINISTRATIVE AND STATE REMEDIES.

Effective May 1, 2004, the Board repealed its regulation requiring life-term inmates to file an administrative appeal when challenging Board decisions. Hence, there is no administrative exhaustion requirement.

On February 23, 2007, petitioner filed a writ in the state courts, raising the same issues as in this petition. These claims were denied by

the California Supreme Court on _____ (see Exhibits 52, 53, and 54). Hence, all state remedies have been properly exhausted.

III. STATEMENT OF JURISDICTION.

The United States District Court for the Southern District of California has legal jurisdiction under 28 U.S.C. §2254(a) which states

> "The Supreme Court, a justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in state custody only on the ground that he is in custody in violation of the constitution or laws or treaties of the United States."

Petitioner asserts that he is in custody in violation of the Constitution of the United States.

The United States District Court for the Southern District of California also has legal jurisdiction under 28 U.S.C. §2254(A) because petitioner has exhausted the remedies available in the courts of the state; and also under §2254(d)(1) because the adjudication of petitioner's claims in state court has "resulted in a decision that was contrary to, or invloved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States."

IV. REQUIREMENTS OF DUE PROCESS; STANDARD OF REVIEW.

1) California's parole scheme gives rise to a cognizable liberty interest that is entitled to protection under both state and federal Constitutions In re Rosenkrantz (2002) 29 Cal.4th 616,621; McQuillion v. Duncan (9th Cir., 2002) 306 F.3d 895,903; Biggs v. Terhune (9th Cir., 2003) 334 F.3d 910, pp.914-915; Sass v. Calif. Bd. of Prison Terms (2006) ___F.3d___ 2006 WL 2506393.

2) Parole decisions must be based on relevant factors and cannot be arbitrary or capricious In re Rosenkrantz, supra, 29 Cal.4th at 677; In re

Dannenberg (2005) 34 Cal.4th 1061,1071; Wolff v. McDonnell (1974) 418 U.S. 539,558; Vitek v. Jones (1980) 445 U.S. 480, pp.488-489; Environmental Defense Center, Inc. v. EPA (9th Cir., 2003) 344 F.3d 832, 858; Dunn v. U.S. Parole Commission (10th Cir., 1987) 818 F.2d 742,745; Montoya v. U.S. Parole Commission (10th Cir., 1990) 908 F.2d 635.

3) Parole decisions must be supported by "some evidence" and that evidence must have an "indicia of reliability" In re Rosenkrantz (Id.); Superintendent v. Hill (1985) 472 U.S. 445, 457. Additionally, suitability determinations must have some rational basis in fact In re Lee (2006) 43 Cal.App.4th 1400; In re Elkins (2006) 144 Cal.App.4th 475.

4) The Board must set a parole release date unless a prisoner is found unsuitable for parole as specified by statute or regulation In re Rosenkrantz (Id.). Furthermore, prisoners are entitled to the benefits of the state statutes they are sentenced under and have the right to expect prison officials to follow their own regulations Hicks v. Oklahoma (1980) 447 U.S. 343; United States v. Nixon (1974) 418 U.S. 683, pp.695-696; Vargas v. U.S. Parole Commission (9th Cir., 1988) 865 F.2d 191, pp.193-194.

5) Interminable parole denials, based on unchanging, static factors and contrary to substantial change for the better violate due process and result in an arbitrary denial of prisoners' liberty interests Greenholtz v. Nebraska Penal Inmates (1979) 442 u.s. 1, 15; Wolff v. McDonnell (Id.); Biggs v. Terhune (Id.); Irons v. Warden of Cal. State Prison-Solano (E.D. Cal. 2005) 358 F.Supp.2d 936,947; Rosenkrantz v. Marshall (C.D. Cal. 2006) 444 F.Supp.2d 1063, pp.1081-1082.

GROUND #1: THE BOARD FAILED TO FOLLOW ITS OWN RULES AND REGULATIONS AT PETITIONER'S 2006 PAROLE HEARING, THUS VIOLATING PETITIONER'S RIGHT TO DUE PROCESS AS GUARANTEED BY BOTH STATE AND FEDERAL CONSTITUTIONS.

At petitioner's 2006 parole hearing, the Board found petitioner unsuitable for parole and denied petitioner a parole release date for two years (Exhibit 46, pp.99-106). According to the decision, the Board found petitioner unsuitable for parole because 1) the offenses were carried out in an especially cruel and callous manner; 2) there were multiple victims attacked, injured, and killed in separate instances; 3) the offenses were carried out in a manner which demonstrates an exceptionally callous disregard for human suffering; 4) the motive for the crimes were very trivial in relation to the offenses; 5) there is an escalating pattern of criminal conduct and violence; 6) [petitioner has] a history of unstable and tumultuous relationships; 7) [petitioner has] failed previous grants of parole or society's previous attemptes to correct [his criminality]; 8) [petitioner has] five serious CDC 115 disciplinaries, four for violence, one for alcohol; and 9) the most recent psychological report is not supportive of release (Id.).

As the record indicates, the Board denied petitioner's parole based on the criteria set forth in California Code of Regulations (hereafter CCR), Title 15, Division 2, §2281(c) (Exhibit 1, p.3). However, these criteria are to be applied to prisoners who committed their offense after July 1, 1977. As stated in CCR §2292(a), "All life prisoners committed to state prison for crime(s) committed prior to July 1, 1977 shall be heard in accordance with rules in effect prior to July 1, 1977." (Exhibit 1, p.7) Furthermore, CCR §2300 states, "All ISL prisoners shall be considered for parole pursuant to the procedures in this article." (Exhibit 1, p.8) Petitioner is an ISL prisoner as he was "sentenced to prison for a crime committed on or before June 30, 1977...." (CCR §2000(b)(1), Exhibit 1, p.2; Exhibits 2,3,4).

Accordingly, "In determining whether an ISL prisoner is unsuitable for parole, the hearing panel shall consider factors which affect the severity of the offense and the risk of danger to society if the prisoner were released. Examples of factors indicating the prisoner is unsuitable for parole include

a) A history of violent attacks.

b) A history of forcible sexual attacks on others.

c) A persistent pattern of criminal behavior and a failure to demonstrate evidence of a substantial change for the better.

d) The presence of a psychiatric or psychological condition related to the prisoner's criminality which creates a high likelihood that new serious crimes will be committed if released." (CCR §2316, Exhibit 1, p.9).

Finally, CCR §2000(a) states, "shall" is mandatory (Exhibit 1, p.2). Hence, according to the Board's regulations, the Board did not apply the correct guidelines in determining petitioner's suitability for parole. This violates due process. As established by the U.S. Supreme Court and Ninth Circuit Court of Appeals, prison officials (including parole boards) are bound to follow their own regulations and these regulations have the force of law United States v. Nixon (1974) 418 U.S. 683, 695-696; Vargas v. U.S. Parole Commission (9th Cir., 1988) 865 F.2d 191, pp.193-194. Other federal courts concur. In Caldwell, for example, the 7th Circuit states, "an agency must conform its actions to the procedures it has adopted" and inmates have "the right to expect prison officials to follow its policies and regulations (Citations omitted)." Caldwell v. Miller (7th Cir., 1986) 790 F.2d 589, pp.609-610. Similarily, the 10th Circuit states that administrative agencies are required to follow their own regulations Bar MK Ranches v. Yeuther (10th Cir., 1993) 994 F.2d 735; while the 11th Circuit states that "an agency must follow its own procedure even though the procedure is more stringent than would constitutionally be required." (11th Cir., 1983)

714 F.2d 1510,1517 (see also Schering Corp. v. Shalala (D.C. Cir., 1993) holding no matter what agency has said in past, or what it did not say, after agency issues regulations it must abide by them). California Courts have made similar rulings as well (see, for example, In re French (1980) 106 Cal.App.3d 74, 85, n.24, holding Director's rules are binding on individual institutions; In re Reina (1985) 171 Cal.App.3d 638; and Agricultural Labor Relations Bd. v. Superior Court (1976) 16 Cal.3d 392,401). As the above facts and arguments demonstrate, then, the Board violated Due Process by failing to follow its own regulations.

GROUND #2: THE BOARD'S DECISION IS ARBITRARY AND CAPRICIOUS BECAUSE IT IS UNSUPPORTED BY ANY EVIDENCE, INAPPOSITE TO THE RECORD, AND LACKS ANY RATIONAL NEXUS BETWEEN THE FACTORS CITED AND PETITIONER'S CURRENT PAROLE RISK, THUS VIOLATING PETITIONER'S STATE AND FEDERAL CONSTITUTIONAL RIGHT TO DUE PROCESS.

California's parole scheme gives rise to a cognizable liberty interest that is entitled to protection under both state and federal constitutions In re Rosenkrantz (2002) 29 Cal.4th 616,621; McQuillion v. Duncan (9th Cir., 2002) 306 F.3d 895,903; Biggs v. Terhune (9th Cir., 2003) 334 F.3d 910,914-915; Sass v. Calif. Bd. of Prison Terms (2006) ___F.3d___ 2006 WL 2506393.

Under California state law, one year prior to petitioner's minimum eligible parole release date, petitioner is entitled to appear before the Board of Parole Hearings (or "Board") to be considered for parole (Penal Codes 3041(a) and 3041(b)). Accordingly, as specified by statute, the Board "shall normally set a parole release date" unless "it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration...." In re Ramirez (2001) 94 Cal.App.4th 549; 114 Cal.Rptr.2d 381,393.

The Board has established regulations for determining whether an inmate is suitable or unsuitable for release on parole which are published in the California Code of Regulations, Title 15, Division 2 (hereafter "CCR"). The relevant sections of the CCR, as applied by the Board at petitioner's parole hearing, are CCR §2280-2292 (Exhibit 1). CCR §2281(a) states, "The panel shall first determine whether a prisoner is suitable for release on parole. Regardless of the length of time served, a life prisoner shall be found unsuitable and denied parole if in the judgement of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison." Hence, as specified by statute and regulation, the Board shall set a release date unless the inmate currently poses an unreasonable risk of danger to

society (see In re Smith (2003) 114 Cal.App.4th 343,370, holding "[A] determination of unsuitability is simply shorthand for a finding that a prisoner currently would pose an unreasonable risk of danger if released at this time.").

In making its determination, the Board "must be cognizant not only of the factors required by state statute...but also the concepts embodied in the Constitution requiring Due Process." Greenholtz v. Nebraska Penal Inmates (1979) 442 U.S. 1, pp.7-8. Furthermore, according to the California Supreme Court, parole decisions "must reflect an individualized consideration of the specified criteria and cannot be arbitrary and capricious." In re Rosenkrantz (2002) 29 Cal.4th 616,677; see also In re Dannenberg (2005) 34 Cal.4th 1061, 1071, holding Board decisions not based on evidence or relevant factors may deny prisoners their Due Process rights. Our U.S. Supreme Court demands no less, holding "Prisoners are entitled to be free from arbitrary actions of prison officials that affect their constitutionally protected interests." Wolff v. McDonnell (1974) 418 U.S. 539,558; Vitek v. Jones (1980) 445 U.S. 480, pp.488-489. As summarized in Ramirez,

> "Judicial oversight must be extensive enough to protect the limited right of parole applicants to be free from an arbitrary parole decision...and to something more than mere pro forma consideration. (citation) The courts may properly determine whether the Board's handling of parole applicants is consistent with parole policies established by the Legislature. (citation) While courts must give great weight to the Board's interpretation of the parole statutes and regulations, final responsibility for interpreting the law rests with the courts. (citation) Courts must not second-guess the Board's evidentiary findings (citation). However, it is the proper function of judicial review to ensure the Board has honored in a 'practical sense' the applicants right to 'due consideration'." (citation) In re Ramirez (2001) 94 Cal.App.4th 549,564.

A. There is not "some evidence" to support the Board's decision that petitioner currently poses an unreasonable risk of danger to society.

According to state and federal law, parole decisions must be supported by some evidence and that evidence must have an "indicia of reliability" In re Rosenkrantz (Id.); Biggs v. Terhune (9th Cir., 2003) 334 F.3d 910,915. More specifically, "suitability determinations must have some rational basis in fact." In re Elkins (2006)___Cal.Rptr.3d___2006 WL3072139.

It is important that the some evidence standard be properly understood. First, the some evidence standard is an additional requirement of due process, not the only requirement Edwards v. Balisok (1997) 520 U.S. 641,648. Second, the courts are not to look only at whether some evidence supports the Board's application of any given criteria, but whether the Board's decision contains some evidence that an inmate currently poses an unreasonable risk of danger to society In re Lee (2006)___Cal.Rptr.3d___2006 WL 2947968, p.4; In re Elkins (2006)___Cal.Rptr.3d___2006 WL 3072139, p.12.

As stated in Rosenkrantz, "the governing statute provides the Board must grant parole unless it determines that public safety requires a lengthier period of incarceration for the individual because of the gravity of the offense underlying the conviction. (Citation) And as set forth in the governing regulations, the Board must set a parole date for a prisoner unless it finds, in the exercise of its judgement, after considering the circumstances enumerated in section 2402 [or 2281] of the regulations, that the prisoner is unsuitable for parole." In re Rosenkrantz (2002) 128 Cal.Rptr. 114,138. Hence, as required by our state supreme court, the Board must set a parole date unless a prisoner is found unsuitable for parole as specified by statute or regulation.

In making the section 3041(b) suitability determination, the Board must consider "[a]ll relevant, reliable information" (CCR §2281(b)), including the

nature of the commitment offense and behavior before, during, and after the crime; the prisoner's social history; mental state; criminal record; attitude towards the crime; and parole plans (CCR §2281(b)). The Circumstances tending to show unsuitability for parole include that the inmate 1) Committed the offense in a particularly heinous, atrocious, or cruel manner; 2) possesses a previous record of violence; 3) has an unstable social history; 4) has previously sexually assaulted another individual in a sadistic manner; 5) has a lengthy history of severe mental problems related to the offense; and 6) has engaged in serious misconduct while in prison (CCR §2281(c) (1)(2)(3)(4)(5) & (6).

At petitioner's 2006 parole hearing, the Board denied petitioner a parole release date because 1) The offenses were carried out in an especially cruel and callous manner; 2) There were multiple victims attacked and injured, and killed in separate instances; 3) The offenses were carried out in a manner which demonstrates an exceptionally callous disregard for human suffering; 4) The motive for the crimes were very trivial in relation to the offenses; 5) There is an escalating pattern of criminal conduct and violence; 6) [Petitioner has] a history of unstable and tumultuous relationships; 7) [Petitioner has] failed previous grants of parole or society's previous attempts to correct [his criminality]; 8) [Petitioner has] five serious CDC 115 disciplinaries, four for violence, one for alcohol; and 9) The most recent psychological report is not supportive of release (Exhibit 46, pp.99-106). These factors, however, either lack support, are not specified by regulation, or do not serve as evidence that petitioner currently poses an unreasonable risk of danger to society.

CCR §2281(c)(1) identifies five circumstances (or factors) that indicate unsuitability, and the first five reasons cited by the Board to deny petitioner parole fall under this regulation. These reasons cited by the Board, however, do not constitute "some evidence" that petitioner currently poses an

unreasonable risk of danger to society. While it's true petitioner's offenses involve multiple victims who were attacked, injured or killed in the same or separate incidents (CCR §2281(c)(1)(A)), the offenses are so old now (i.e., over 28½ years at the time of the hearing) that they lack the "intercia of reliability" to indicate that petitioner still poses a current, credible danger (see, for example, In re Elkins, Id. at p.12, holding "the predictive value of the commitment offense may be very questionable after a long period of time. (Citation)"). Furthermore, there is no evidence that petitioner committed his offenses in a dispassionate and calculated manner such as an execution style murder (CCR §2281(c)(1)(B)). The only offense in which petitioner actually shot and killed someone was the murder of Laura Stoughton, and there is no evidence that petitioner "bound, cuffed, gagged, blindfolded", or forced Laura Stoughton "to assume a position from which she was unable to resist or flee", or "shot her in the back of the head", which are the essential elements of an execution style murder. The CYA Referral Report states that petitioner and his crime partner "pumped rifle shells into Laura Stoughton's body as she knelt holding a crucifix" (Exhibit 5, p.6). This statement, however, is completely false. The statement was made by a CYA counselor who based his report on what appears to be police reports of the original indictment (Exhibit 5, pp.2,4). Yet nowhere does the counselor state that the actual police reports themselves make this statement. More significantly, petitioner's crime partner never shot Laura Stoughton (Exhibit 8; Exhibit 6, p.4) which clearly shows the statement is false. In citing this particular regulation, in fact, the Board stops short of describing petitioner's offense as an execution style murder which is a misapplication of the regulation. As stated in Rosenkrantz, the Board can deny parole only if the circumstances of the offense meet the specified criteria as outlined in the regulations (In re Rosenkrantz, Id.).

Additionally, there is no evidence that petitioner carried out the offenses in a manner which demonstrates an exceptionally callous disregard for human suffering (CCR §2281(c)(1)(D)). The offense by which petitioner's actions are to be judged is the murder of Laura Stoughton because petitioner did not use a firearm during, or actually commit, the murder of Aubrey Duncan (Exhibits 2,3, and 8). Although it's true a prisoner may be legally culpable for the acts of his companion, his suitability for parole must be based on his actions In re Ramirez, supra, 94 Cal.App.4th at 570; In re Smith (2003) 109 Cal.App.4th 489,504. Given this criteria, there is no evidence that petitioner "tormented, terrorized, or injured" Laura Stoughton before deciding to shoot her; or that petitioner "gratuitously increased or unnecessarily prolonged" her pain and suffering In re Smith (2003) 114 Cal.App. 4th 343. Even if petitioner's actions in the Duncan murders were able to be relied on, petitioner is alleged to have only driven the car and ripped a key ring from the belt loop of Aubrey Duncan after petitioner's crime partner, Brett Thomas, shot Mr. Duncan (Exhibit 8). The District Attorney's 1203.01 statement alleges that petitioner stepped on the gas to muffle gun shots (Exhibit 7), which petitioner denies, but even if that were true that fact would not make petitioner's actions particularly egregious, but would indicate only that the murder was premeditated, which is the minimum necessary to sustain a conviction for first degree murder, not a factor of aggravation (see In re Dannenberg (2005) 34 Cal.4th 1061,1098, holding to deny parole under the exceptionally callous or cruel factor there must be some evidence that the prisoner engaged in conduct apart and beyond the minimum necessary to convict him of first degree murder or that indicates the prisoner cruelly or callously exacerbated the victim's suffering).

Although petitioner denies the validity of the District Attorney's 1203.01 statement (Exhibit 17, p.9; Exhibit 18), even if it were true the record

would still be devoid of aggravated conduct. The District Attorney's reference to an attempted rape, for example, is evidence only that petitioner's crime partner, Brett Thomas, made such a statement, not that an attempted rape actually occurred (Exhibit 7). Petitioner has established, in fact, that there is no evidence of an attempted rape (Exhibits 10, 11, and 46, p.89). The District Attorney's assertion that Laura Stoughton was praying for her life is not indicative of aggravated conduct either. The District Attorney states she was praying for her life, not that she was on her knees, clutching a rosary, praying for her life (Exhibit 7). Furthermore, while petitioner denies the validity of this statement (Exhibit 17, p.3), even if it were true, the fact that Laura Stoughton may have been praying for her life is not something that would not normally occur in any kidnap-murder. As petitioner pointed out in his proceedings challenging his 2001 parole hearing, if he had been kidnapped and placed in the trunk of a car and driven to a remote area, he probably would have been praying for his life too, irregardless of whether anyone had ever told him that he was going to be killed. The fact is, even if the District Attorney's 1203.01 statement is assumed true, it only describes the callousness of the offense, not aggravating conduct.

The Board's assertion that the motive for petitioner's offense is trivial (CCR §2281(c)(1)(E)) is also without merit. As stated in the records, petitioner admitted that he killed Laura Stoughton because his crime partner had been recently photographed by the Garden Grove Police Department (the same city where Laura Stoughton resided), and they were afraid that Laura Stoughton might be able to identify him which could result in them being apprehended for kidnapping, a life offense (Exhibit 6, p.9). Petitioner's 2006 Life Prisoner Evaluation Report also lists as an aggravating factor that the murder was committed to prevent the detection of another crime (Exhibit 13, p.4). As stated in Scott, however, "to fit the regulatory description [of

the unsuitability guideline as described in CCR §2281(c)(1)(E)] the motive must be materially less significant (or more 'trivial') than those which conventionally drive people to commit the offense in question." In re Scott (2004) 119 Cal.App.4th 871,884. Committing murder to prevent being apprehended for another crime, though callous and offensive, is not an uncommon motive. Hence, the application of CCR §2281(c)(1)(E) to the facts of petitioner's case is clearly not appropriate.

There also is no evidence that petitioner has an escalating pattern of violence (CCR §2281(c)(2)). As petitioner stated during the hearing (Exhibit 46, pp.26-28) and in his previous appeals (Exhibit 17, p.9), petitioner has not been convicted of assault with intent to commit murder, or threatening a juvenile hall counselor (Exhibit 12), which are the charges the Board is relying on to establish that petitioner has a previous history of violence. In the Board's response to petitioner's BPT 1040 appeal of his 2003 parole hearing, in fact, the Board admitted that it based this finding on petitioner's current convictions, not petitioner's previous record, which is a complete misapplication of CCR §2281(c)(2) (see Exhibit 17, p.2). Were the Board able to rely on current convictions to establish that a prisoner has a previous record of violence, then every prisoner would meet the criteria of that regulation. More significantly, even if it were assumed that petitioner did in fact assault another with intent to commit murder and threatened a juvenile hall counselor, petitioner still would not meet the criteria of CCR §2281(c)(2). As the regulation states, a prisoner must have "on previous occasions (i.e., more than once) inflicted or attempted to inflict serious injury on a victim." Threatening a counselor can in no way be considered an attempt to inflict serious injury on a person and, thus, petitioner does not meet the criteria of CCR §2281(c)(2) (see also In re Van Houton (2004) 116 Cal.App.4th 339,353, holding inmate's previous arrest record did not constitute some evidence of

threat to public safety because alleged acts did not involve serious injury or attempted serious injury to a victim."

The record also lacks evidence that petitioner has a history of unstable and tumultuous relationships (CCR §2281(c)(3)). The primary figure that petitioner had what might be characterized as a tumultuous relationship with was his father (Exhibit 5, pp.6-8,13; Exhibit 6, p.12; Exhibit 13, p.5) and, as pointed out in Cortinas one unstable relationship doesn't constitute some evidence of a history of unstable relationships In re Cortinas 2004 DJDAR 5786,5792. More importantly, even if it were true that petitioner experienced tumultuous relationships some 28 years ago, it wouldn't indicate that petitioner currently poses a danger to society, especially in the face of more current evidence indicating petitioner has no problems relating with others (see, for example, Exhibits 37 and 40) In re Lee (2006) ___Cal.Rptr.___3d 2006 WL 2947968, p.4.

The Board's reliance on petitioner's failure at previous grants of parole (reason #8) and his past disciplinaries (CCR §2281(c)(6)) also do not serve as evidence that petitioner currently poses a danger to society In re Lee (Id. at p.4). Petitioner's failure at previous grants of probation or parole is not a "circumstance" (or factor) of "unsuitability" and occurred over three decades ago, when petitioner was fourteen, fifteen, sixteen, and seventeen years old, and can no longer be regarded as "relevant, reliable information" (CCR §2281(b)). The same may be said about petitioner's past disciplinaries, four for violence (i.e., fist fights), one for alcohol, which were over two decades old (20 years) at the time of the hearing. As petitioner pointed out to one of the Board members, not a lot of prisoners can claim they came to prison at age 17, served over 28½ years, and remained disciplinary free (Exhibit 46, pp.74-75), especially given the dark, violent, brutal nature of prison life (Exhibit 44).

Finally, there is no evidence that petitioner has a "lengthy history of severe mental problems related to the offense" (CCR §2281(c)(5)). At petitioner's 2006 parole hearing, the Board determined that petitioner's most recent psychological report is not supportive of release (Exhibit 46, pp.100-102). Petitioner disagrees. Forensic Psychiatrist John C. Preston, M.D., writes in petitioner's 2006 Mental Health Evaluation

> "It is my opinion that Mr. Titch poses a less than average risk of violence in the structured setting as compared to other inmates in this institution...In the event of release to the community, it is my opinion that he will continue to present a less than average risk of violent behavior." (Exhibit 19, p.5).

Dr. Preston also diagnoses petitioner as "Antisocial Personality Disorder, by hx" (meaning by history only, not currently, Exhibit 19, p.4) and states

> "I do not believe that mental health issues will necessarily be the deciding factor in terms of deciding when Mr. Titch is appropriate for parole." (Exhibit 19, p.6)

Other state documentation indicates petitioner does not have a "severe mental disorder related to the offense", as CCR §2281(c)(5) requires. In petitioner's 1992 Psychiatric Evaluation, Forensic Psychiatrist John Hirschberg, M.D., states

> "There is no history of mental illness" (Exhibit 24, p.1), concluding "there is no emotional mental illness to be treated, which means in essence, mental health reports may not significantly affect his parole status. It would seem, therefore, that the decision to parole would have to depend on factors other than psychological." (Exhibit 24, p.2).

In petitioner's 1995 Psychological Evaluation, Forensic Psychologist Edwin P. Jenesky, Ph.D, diagnoses petitioner as "Antisocial by History" and states

> "The diagnosed psychopathology, i.e., an antisocial personality disorder, although not considered a major mental illness, has been directly related to criminal behavior." (Exhibit 23, p.2).

In petitioner's second 1995 Psychological Evaluation, Forensic Psychologist Scott Smith, Ph.D., diagnosed petitioner as "Antisocial Personality Disorder" and states

> "It seems safe to say that Mr. Titch has, at this point, a considerable amount of ego strength, which indicates that he has the ability to exercise self-control, should he so choose. The other, more complicated consideration is the attempt to assess whether he will, in fact, choose to refrain from violence after release. First and foremost, the best prognostic indicator for future conduct is past conduct, particularly over the past two years. There is no documented evidence that Mr. Titch has engaged in any violent behavior at CDC for over nine years." (Id.)

Dr. Smith goes on to conclude

> "Mr. Titch appears to have improved greatly during his time in the custody of CDC. In a less controlled setting, such as return to the community, he may continue to hold most of his present gains, particularly if he refrains from use of alcohol and/or drugs. Also, it is the opinion of this writer that Mr. Titch has probably realized most, if not all, of the improvement that he is likely to experience in the custody of CDC. As of the current interview, Mr. Titch did not appear to be suffering from any major psychiatric disorder, and there is no evidence that this has ever been an issue for him. Any decisions related to his parole should be based upon other criteria." (Id.).

Finally, in petitioner's 2000 Psychological Evaluation, Forensic Psychologist Alvin Chandler, Ph.D., states

> "There does not appear to be any current diagnostic concerns for this inmate as far as a serious mental disorder...There are no reported historic psychiatric concerns." (Exhibit 20, p.4).

Hence, as the record clearly demonstrates, there is no evidence that petitioner meets the criteria of CCR §2281(c)(5).

As the above facts and arguments indicate, the Board's decision is arbitrary and capricious and violates due process, as guaranteed by both state and federal Constitutions, because there is no evidence that petitioner currently poses an unreasonable risk of danger to society In re Rosenkrantz (Id.); McQuillion v. Duncan (Id.); Biggs v. Terhune (Id.). Moreover, the Board's decision violates due process because it also deprives petitioner of the benfits of the state penal statutes which he is sentenced to Hicks v.

Oklahoma (1980) 447 U.S. 343. Additionally, the Board's decision violates due process because it does not conform with the Board's own regulations (see, for example, Vargas v. U.S. Parole Commission (9th Cir., 1988) 865 F.2d 191, pp.193-194, holding parole boards are bound to follow their own regulations and...these regulations have the force of law; and Ellard v. Alabama Board of Pardons and Paroles (11th Cir., 1987) 824 F.2d 937,943, holding "[T]he Due Process clause...prohibits the states from negating by their actions rights they have conferred by their words.").

B. The Board's decision is inapposite to the record.

The Board's decision is arbitrary and capricious and abrogates due process because it is inapposite to the record that was before them. As the record clearly shows, during petitioner's 28-plus years of incarceration he has undergone substantial change for the better and no longer presents a current danger to society. Vocationally and educationally, petitioner has obtained training in Drafting (Exhibit 36, p.3); Offset Printing (Exhibit 37, p.3); Welding, Carpentry, Masonry, and as an Apprentice Electrician (Exhibit 37, pp.1-2); he learned how to operate heavy equipment (Exhibit 37, p.1); and he acquired his High School Diploma, an Associate of Arts Degree, and is currently 21 units short of a Bachelors degree in Business Administration (Exhibit 36, pp.1-2). Petitioner has completed, and continues to participate in, various self-help groups such as Alcoholics Anonymous, the Rapha 12-Step Program, Basic and Advanced courses in "Conflict Resolution", biblical courses in "Self-Confrontation", "Purpose Driven life", and "Kairos", and the Match 2 (M2) Program (Exhibit 41). Petitioner has also volunteered his time to help other inmates learn how to read and write (Exhibit 41, p.25); participated in Walk-A-Thons to help raise money for abused children (Exhibit 41, pp.22-24); and helped train other inmates in Offset Printing (Exhibit 37, p.3). Additionally, petitioner has not received a serious CDC-115 disciplinary

write-up for 20-plus years (Exhibit 13, pp.5-6) and has acquired numerous laudatory chronos, denoting his exemplary behavior and conduct (Exhibit 37). More significantly, petitioner has been forensicly evaluated as posing "a less than average risk of violent behavior" if released to the community in his most recent mental health evaluation (Exhibit 19, p.5).

The arbitrariness of the Board's decision becomes even clearer when examining the "Circumstances Tending To Show Suitability" as described in CCR §2281(d): Petitioner does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims (CCR §2281(d)(1); Exhibit 12). Petitioner has experienced reasonably stable relationships with others (CCR §2281(d)(2); Exhibits 37 and 40). Petitioner has shown signs of remorse by indicating that he understands the nature and magnitude of the offenses (CCR §2281(d)(3); Exhibit 13, p.8; Exhibit 14, p.3; Exhibit 15, p.7; Exhibit 20, p.3,5). Petitioner committed his crimes as the result of significant stress in his life as indicated by growing up with an alcoholic father, an unloving mother, and a life on the streets, starting at age 12 (CCR §2281(d)(4). Petitioner lacks any significant history of violent crime (CCR §2281(d)(6); Exhibit 12). Petitioner's present age (i.e., 47) reduces the probability of recidivism (CCR §2281(d)(7)). Petitioner has made realistic plans for release (Exhibits 39 and 40) and developed marketable skills that can be put to use upon release (CCR §2281(d)(8)). And petitioner's institutional activities indicate an enhanced ability to function within the law upon release (CCR §2281(d)(9)). In short, petitioner meets every circumstance tending to show suitability except for CCR §2281(d)(5), "Battered Woman Syndrome" which doesn't apply to him.

In Rosenkrantz, the state supreme court states, "It is irrelevant that a court might determine that evidence in the record tending to establish suitability for parole far outweighs evidence demonstrating unsuitability

for parole." In re Rosenkrantz, supra, 128 Cal.Rptr.114,156. Petitioner disagrees. As stated in Greenholtz, "[t]he behavior of an inmate during confinement is critical in the sense that it reflects the degree to which the inmate is prepared to adjust to parole release." Greenholtz v. Nebraska Penal Inmates (1979) 442 U.S. 1, 15. More importantly, the ultimate question to be determined by the Board is whether or not a prisoner currently poses an unreasonable risk of danger to society. A reformed prisoner can in no way be regarded as a danger or threat to the public, and if a prisoner isn't a current danger than parole must be granted (Penal Codes 3041(a) and 3041(b)).

Another way in which the Board's decision is arbitrary and capricious and inapposite to the record is that it fails to consider petitioner's age at the time he committed his offenses as a mitigating factor. Petitioner committed his crimes when he was a juvenile and was subsequently prosecuted and sentenced as an adult. As pointed out in Rosenkrantz v. Marshall, the "predictive value of a young person is less than that of an adult" (Exhibit 51, p.42) and there is a greater possibility that minors can be reformed. Citing U.S. Supreme Court law, the District court states

> "The susceptibility of juveniles to immature and irresponsible behavior means 'their irresponsible conduct is not as morally reprehensible as that of an adult.' Thompson v. Oklahoma, 487 U.S. 815,835 (1988) (plurality opinion). Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. See Stanford v. Kentucky, 492 U.S. 361,395 (1989) (Brennan J., dissenting). The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, '[t]he relevance of youth as a mitigating

> factor derives from the fact that the signature qualities of youth are transient; as individual's mature, the impetuousness and recklessness that may dominate younger years can subside.' Johnson v. Texas, 509 U.S. 350,368 (1993)." (Exhibit 51, pp.42-43).

Finally, the Board's decision is also inapposite to the record because it ignores the "Matrix of Base Terms for First Degree Murder" as provided in CCR 2282(b) (Exhibit 1, p.4). Given the circumstances of petitioner's committment offense, petitioner falls under categories "C-III" on the Matrix (i.e., "Severe Trauma with No Prior Relationship") which gives a suggested Base Term of 14-16-18 years. At the time of the hearing, however, petitioner had already served 28-plus years. True, the gravity of the offense can serve as the sole reason for denying parole, especially if the offense is particularly egregious (Ramirez, Id.), or the offense involves conduct apart and beyond the minimum necessary to sustain a conviction for first degree murder (Rosenkrantz, Dannenberg, Id.) Yet as petitioner has already demonstrated, his conduct during the offenses cannot be regarded as particularly egregious. More importantly, even a particularly egregious offense has its limits. Consider, for example, the case of Rosenkrantz. The egregiousness of Rosenkrantz's crime as a second degree murder justified denying his parole, but as the state supreme court cautioned once Rosenkrantz reaches the point where he is serving time for first degree murder denying his parole would be questionable, even under the deferential "some evidence" standard In re Rosenkrantz, supra, 128 Cal.Rptr. at pp.166-167. In fact, the state supreme court explicitly stated

> "The Board's authority to make an exception [to the setting of a parole date] should not operate so as to swallow the rule that parole is normally to be granted. Otherwise, the Board's case-by-case rulings would destroy the proportionality contemplated by Penal Code 3041, subdivision (a), and also by the murder statutes, which provide distinct terms of life without possibility of parole, 25 years to life, and 15 years to life for various degrees and kinds of murder." (Id. at p.161)

Even if petitioner's offenses were considered egregious as a first degree murder involving severe trauma, his offenses couldn't be considered egregious as a first degree murder involving torture (since none of his offenses contain elements of torture), yet petitioner has now surpassed the maximum base term (i.e., 22 years; Exhibit 1, p.4) recommended for a murder of that classification. Furthermore, after long periods of time, the egregiousness of the offense loses its weight and, at some point, may even be illogical to use as justification for denying parole. As cited in federal law

> "It is simply irrational for [the] seriousness of the offense to be used first to determine the appropriate guideline period and then to be used again as stated reason for confining a prisoner beyond that guideline period." Lupo v. Norton, 371 F.Supp 156,163. (See also Diaz v. Norton, 376 F.Supp 112 at 115 stating, relying on the seriousness of the offense "beyond the appropriate guideline...would not be appropriate because the guideline table (matrix) already assesses the seriousness of the offense."

Hence, as the above facts and arguments demonstrate, the Board's decision is arbitrary and capricious and violates due process because it is inapposite to the record that was before them during the hearing.

C. The Board's decision lacks a rational nexus between the factors cited and petitioner's current parole risk.

As stated at the outset of this Ground, "suitability determinations must have some rational basis in fact." In re Elkins (2006) ___Cal.Rptr.3d___ 2006 WL 3072139, p.7. Accordingly, parole decisions must be more than a "mouthing of conclusionary words" and have a "reliable factual underpinning" In re Scott (2004) 119 Cal.App.4th 871 (see also In re Smith (2003) 114 Cal. App.343,371, holding Board decisions are arbitrary when no "chain of reasoning" exists between "immutable factor of past drug use and current parole risk in view of long period of abstinence."). Federal law concurs.

In Dunn, for example, the Tenth Circuit struck down a decision by the U.S. Parole Commission on the grounds that it was arbitrary for the commission to rely on 18-year-old insanity plea to deny parole, particularly when current mental health evaluation stated prisoner had no current mental illness Dunn v. U.S. Parole Commission (10th Cir., 1987) 818 F.2d 742,745 (see also Montoya v. U.S. Parole Commission (10th Cir., 1990) 908 F.2d 635, pp.639-640).

A rational nexus may exist, for instance, if a prisoner committed an offense while he was in a gang and current evidence in the record shows that he is still an active gang member or engaging in gang activities; or if a prisoner committed his offense while addicted to drugs and current evidence in the record shows that his addiction is not in remission or he recently used drugs. But in the present case before the court, there is no evidence that such a nexus exists. On the contrary, the reasons cited by the Board to support its conclusion that petitioner currently poses an unreasonable risk of danger to society defies logic. The decision alleges that petitioner is currently an unreasonable risk of danger because he committed his offense in a cold,dispassionate manner (28-plus years ago); committed multiple offenses (28-plus years ago); allegedly developed an escalating pattern of violence (28-plus years ago); received disciplinary write-ups for violence (20-plus years ago); and the like. Yet the record shows that petitioner hasn't committed a single act of violence for more than 20 years; meets every single criteria for suitability; and has been forensicly evaluated as posing a "less than average risk of violent behavior" if released to the community. Additionally, the decision alleges that petitioner currently poses an unreasonable risk of danger to society because, 30 years ago, he experienced a tumultuous relationship with his father. Yet the record shows that for more than two decades petitioner has related well with others, gained the respect of his peers and supervisors, and developed new,

meaningful, lasting relationships with people on the outside, in spite of his disadvantage of being in prison. The Board's reasons for denying petitioner's parole, in fact, clearly meets the definition of "arbitrary", as defined by the Ninth Circuit Court of Appeals, when it stated

> An agency has acted in an arbitrary and capricious manner if "the agency has relied on factors that Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs contrary to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of the agency expertise." Environmental Defense Ctr., Inc. v. EPA (9th Cir., 2003) 344 F.3d 832, 858.

More importantly, according to regulation, parole is to be denied only if petitioner currently poses an unreasonable risk of danger to society (CCR §2281(a)). Is a prisoner who has spent the majority of his nearly three decades in prison developing himself vocationally, educationally, spiritually, and psychologically; who hasn't engaged in any violence for over twenty years; who has developed a job offer and outside support; and who not only has surpassed the maximum suggested time for his particular classification of murder but also for the worst classification of murder possible really be deemed an unreasonable risk of danger to society? Petitioner thinks not. Hence, as the above facts and arguments indicate, the Board's decision is arbitrary and capricious and violates due process because there is no rational nexus between the reasons cited for denying parole and petitioner's current parole risk.

GROUND #3: THE BOARD'S CONTINUAL DENIAL OF PETITIONER'S PAROLE, BASED ON UNCHANGING, STATIC FACTORS, AND CONTRARY TO SUBSTANTIAL CHANGE FOR THE BETTER CONVERTS PETITIONER'S TERM OF LIFE WITH THE POSSIBILITY OF PAROLE TO LIFE WITHOUT THE POSSIBILITY OF PAROLE AND VIOLATES DUE PROCESS AS GUARANTEED BY BOTH STATE AND FEDERAL CONSTITUTIONS

As previously stated, California life-term inmates have a liberty interest entitled to protection under the Due Process clause of the state and U.S. Constitutions In re Rosenkrantz (Id.), McQuillion v. Duncan (Id.), Biggs v. Terhune (Id.). When an individual has a liberty interest protected by the Fourteenth Amendment, it cannot be arbitrarily denied by State government Vitek v. Jones (1980) 445 U.S. 480, pp.488-489; Greenholtz v. Nebraska Penal Inmates (1979) 442 U.S. 1; Morrissey v. Brewer (1972) 408 U.S. 471. Accordingly, "[P]risoners are entitled to be free from arbitrary actions of prison officials that affect their constitutionally protected interests." Wolff v. McDonnell (1974) 418 U.S. 539,558; Hewitt v. Helms (1983) 459 U.S. 460, 466; see also Superintendent v. Hill (1985) 472 U.S. 445, 457, holding a decision by prison officials cannot be "without support" or arbitrary. The California Supreme Court concurs, recognizing that Board decisions not based on evidence or relevant factors may deny prisoners their due process rights In re Dannenberg (2005) 34 Cal.4th 1061,1071. Thus, the touchstone of Due Process is protection of the individual against arbitrary action of government Wolff v. McDonnell, supra, 418 U.S. at 558.

According to the state penal statutes, parole "shall normally" be granted unless a prisoner currently poses an unreasonable risk of danger to society (Penal Codes §§3041(a) and 3041(b)). At petitioner's 2006 parole hearing (and petitioner's ninth appearance before the Board), petitioner presented a plethora of evidence that he has undergone substantial change for the better and does not currently pose a danger to society. Yet in spite of this showing, petitioner was denied parole primarily on outdated, unchanging factors such

as the nature and number of petitioner's offenses; his alleged history of violence; his past failure at previous grants of probation or parole; his alleged history of tumultuous relationships; his past disciplinaries, etc.. [Note: The only reason cited by the Board to deny parole that isn't a static factor is petitioner's most recent psychological evaluation. However, that reason must be excluded because it does not meet the criteria of unsuitability as required in CCR § 2281(c)(5), nor is the report unfavorable as the Board claims. Also, the Board has a history of discounting petitioner's favorable psychological evaluations. In 1992, for example, the Board said Dr. Hirshberg's mental health evaluation, which was favorable, was inconclusive (Exhibit 32, p.6); and in 1995, the Board didn't even mention Dr. Smith's report which was also favorable (Exhibit 31)].

The Ninth Circuit addressed the constitutional propriety of the Board's reliance on the commitment offense and other static factors (particularly pre-commitment factors) in Biggs v. Terhune (9th Cir., 2003) 334 F.3d 910. Biggs was convicted of first degree murder and challenged the Board's decision denying his parole at his initial hearing. Although the Ninth Circuit found no evidence to support most of the Board's grounds for unsuitability, the court nevertheless affirmed the Board's decision, reasoning "the parole board's sole reliance on the gravity of the offense and conduct prior to imprisonment to justify denial of parole can be initially justified as fulfilling the requirements set forth by state law." (Id. at 916). The Ninth Circuit cautioned, however, that "Over time... should Biggs continue to demonstrate exemplary behavior and evidence of rehabilitation, denying him a parole date simply because of the nature of his offense would raise serious questions involving his liberty interest." (Id.). The Ninth Circuit also stated, "A continued reliance in the future on an unchanging factor, the circumstance of the offense, and conduct

prior to imprisonment, runs contrary to the rehabilitative goals espoused by the prison system and could result in a due process violation." (Id. at 917).

Although the Ninth Circuit did not hold when a due process violation would occur, the California Courts of Appeal and several United States District Courts have found that the Board's reliance on unchanging factors and the commitment offense in certain cases violated due process (see, for example, In re Elkins (2006) 144 Cal.App.4th 475,498, review denied Nov. 8, 2006 ["Given the lapse of 26 years and the exemplary rehabilitative gains made by [the prisoner] over that time, continued reliance on [the] aggravating facts of the crime no longer amount to 'some evidence' supporting denial of parole."]; In re Lee (2006) 43 Cal.App.4th 1400,1409 ["Like the Governor, we do not minimze the seriousness of Lee's offenses 19 years ago, for which society has legitimately punished him. No reasonable possibility exists, however, that Lee will reoffend. Other than his offenses here, he has led a crime-free life."]; Id. at 1412 ["Simply from the passing of time, Lee's crimes almost 20 years ago have lost much of their usefulness in forseeing the liklihood of future offenses than if he had committed them five or ten years ago."]; Irons v. Warden of Cal. State Prison-Solano (E.D. Cal. 2005) 358 F.Supp.2d 936,947 ["In the instant case, the [Board] has apparently relied on these unchanging factors at least four prior times in finding petitioner unsuitable for parole. Petitioner has continued to demonstrate exemplary behavior and evidence of rehabilitation. Under these circumstances, the continued reliance on these factors at the 2001 hearing violated due process." Internal citations omitted. See Exhibit 49.]; Rosenkrantz v. Marshall (C.D. Cal. 2006) 444 F.Supp.2d 1063, 1081-1082 ["In the circumstances of this case, the [Board's] continued reliance upon the nature of petitioner's crime to deny parole in 2004 violated due process[.]

[C]ontinued reliance upon the unchanging facts of petitioner's crime makes a sham of California's parole system and amounts to an arbitrary denial of petitioner's liberty interest." See Exhibit 51]; Evans v. Carey (E.D. Cal. 2006) WL 1867543 at 6 ["Although the Ninth Circuit in Biggs did not explicitly state when reliance on an unchanging factor would violate due process, it makes sense that reliance on such a factor becomes unconstitutional when the factor no longer has predictive value."]).

In Elkins, the prisoner was serving a sentence of twenty-five years to life after being convicted of first degree murder and robbery, with use of a deadly weapon (Elkins, supra, 144 Cal.App.4th at 479). He had served twenty-six years (eleven years past his minimum eligible parole date) and had been denied parole at ten prior hearings (Id. at 499-500). At his eleventh hearing, the Board granted Elkins parole, which the Governor subsequently reversed (Id.). Elkins had received positive psychiatric evaluations, participated in self-help and vocational training, had realistic parole plans, and had only received two disciplinaries during his twenty-six years of incarceration. (Id. at 483) Both the Board denials and the Governor's reversal relied primarily on the gravity of his commitment offense (Id.). The Elkins court vacated the Governor's decision holding that the Governor's decision to reverse the grant of parole based on the commitment offense lacked "some evidence" that Elkins posed an unreasonable risk of danger (Id. at 502). The court held that the Governor's reliance on the remote immutable facts of the commitment offense violated Elkin's due process rights (Id. at 500).

In Rosenkrantz v. Marshall, the prisoner had been denied parole on six previous occasions on a sentence of seventeen years to life with the possibility of parole for a conviction of second degree murder with use of a firearm Rosenkrantz v. Marshall, supra, 444 F.Supp.2d at 1082. (See also

Exhibit 51).. The Board's rationale for finding him unsuitable was based solely on the nature of the commitment offense (Id. at 1084). However, the court found that "[a]fter nearly twenty years of rehabilitation, the ability to predict a prisoner's furture dangerousness based simply on the circumstances of his or her crime is nil." (Id.) The court held that, after such a long period, the pre-commitment factors had lost all predictive value, and the Board's continued reliance on them to deny parole violated due process "because the facts surrounding the offense do not now constitute 'some evidence' with some 'indicia of reliability' of petitioner's dangerousness." (Id. at 1086). The court ordered Rosenkrantz released on parole (Id. at 1087-1088).

In Irons, the petitioner was serving a sentence of seventeen years to life with the possibility of parole for second degree murder Irons v. Warden of Cal. State Prison - Solano, supra, 358 F.Supp.2d 936,939 (see Exhibit 49). In denying Irons parole, the Board relied on the circumstances of the commitment offense, specifically, that he demonstrated callous disregard for human life and the motive of the crime was trivial (Id. at 944). The court found that he had realistic parole plans, no juvenile record, and minimal prior criminal history (Id.). The court additionally found that the circumstances of the crime could never change and therefore the Board could perpetually deny parole forever, or at best, until some future panel arbitrarily found that the crimes were not so callous or trivial (Id. at 947). As the court opined, a prisoner's "liberty interest should not be determined by such an arbitrary, remote possibility." (Id.) The court held that the Board's continued reliance on the facts of the commitment offense violated due process (Id.).

The facts of petitioner's case, although different from the Biggs, Elkins, Rosenkrantz, and Irons cases, are in no way less compelling.

Petitioner has an exemplary record and has shown substantial change for the better. Vocationally and educationally, petitioner has obtained training in Drafting, Offset Printing, Construction, Heavy Equipment, and nearly completed a Bachelor degree in Business Administration (Exhibits 36 and 37). Petitioner has completed self-help groups and other positive programs and continues to be actively involved in Alcoholics Anonymous (Exhibit 41). Petitioner has established realistic plans for release as evidenced by his job offer and support letters (Exhibits 39 and 40). And petitioner has been forensicly evaluated as posing a "less than average risk of violent behavior" if released to the community (Exhibit 19). More significantly, petitioner has appeared before the Board on nine separate occasions (the most recent being 23 years past his minimum eligible parole release date) and each time the Board has relied on the same unchanging, static factors to deny parole, including some reasons the Board should have never been using (see Exhibits 28 through 35). If a prisoner's postconviction behavior doesn't carry any weight and his current dangerousness is continually evaluated on the unchanging circumstances of his offense and other static factors, then there is no difference between life with the possibility of parole and life without the possibility of parole. A prisoner's offense, social and criminal history, and behavior of more than two decades ago will never change, and using these static factors as the measuring stick to gauge petitioner's current dangerousness means he will always be labeled an unreasonable risk of danger to society. Like the hamster that spends its time running on the turn-wheel and never gets anywhere, petitioner will be forever completing one requirement or positive program after another but never get any closer to release. This makes a mockery of the parole system and, as such, violates due process.

It might be argued that since petitioner has been scheduled for another consideration hearing in 2008 he couldn't possibly be serving a sentence

of life without the possibility of parole, in which case, petitioner would disagree. While its true that under the ISL (which petitioner was originally sentenced under), the Board placed a higher value on rehabilitation and honored the law (regardless of a prisoner's commitment offense, Exhibit 42), this is no longer the case today. As In re Rutherford (Exhibit 45), Coleman v. BPT (Exhibit 48), and the Governor's policy of appointing primarily law enforcement officials and former crime victims advocates to the parole board clearly shows (Exhibit 44, pp.11-12), the Board routinely disregards the law to follow its own "no parole" policy. Current statistics support this contention (Exhibit 42, pp.9-11; Exhibit 43; Exhibit 44, p.2) as well as do the growing number of state and federal cases against the Board and Governor In re Ramirez (2001) 94 Cal.App.4th 549; In re Smith (2003) 109 Cal.App.4th 489; In re Smith (2003) 114 Cal.App.4th 343; In re Scott (2004) 119 Cal.App.4th 871; In re Scott (2005) 133 Cal.App.4th 573; In re Elkins (2006) 144 Cal.App.4th 475; In re Lee (2006) 143 Cal.App.4th 1400; Mcquillion v. Duncan (9th Cir., 2002) 306 F.3d 895; Irons v. Warden of Cal. State Prison-Solano (2005) 358 F.Supp.2d 936; Rosenkrantz v. Marshall (2006) 444 F.Supp.2d 1063; Evans v. Carey (E.D Cal. 2006) WL 1867543. Call the sentence whatever one likes, but for petitioner and many other life-term prisoners "life with" is synonymous with "life without" and will remain so until the courts compel the state to act otherwise (Exhibits 50 and 51). Hence, as the above facts and arguments clearly show, the Board's continual denial of petitioner's parole, based on unchanging, static factors and contrary to substantial change for the better, is arbitrary and capricious and violates due process as gauranteed by both state and federal Constitutions.

PRAYER FOR RELIEF

Petitioner is without remedy save by Writ of Habeas Corpus.

WHEREFORE, having made a prima facie case for relief, petitioner prays that the court:

1) Issue the Writ of Habeas Corpus;

2) Issue an Order To Show Cause on respondents as to why relief should not be granted;

3) Make a determination as to whether respondents have violated petitioner's state or federal constitutional right to Due Process;

4) Upon any finding that respondents have unlawfully denied petitioner's liberty interest or violated petitioner's Due Process rights, order respondents to vacate the decision of petitioner's 2006 parole hearing, hold a new hearing within 30 days, and set petitioner's parole release date;

5) Grant any and all relief necessary to ensure the protection of petitioner's right to Due Process as guaranteed by the United States Constitution.

VERIFICATION

I Mark Titch, do hereby declare the following:

I am the petitioner in this action. I have read the foregoing Petition For Writ of Habeas Corpus and the facts stated therein are true of my own knowledge, except as to matters that are therein stated on my own information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury of both state and federal laws that the foregoing is true and correct and that this declaration was executed on 4/8/08 at San Diego, California.

/S/ Mark W. Titch
Mark W. Titch,
Petitioner, Pro Se

DECLARATION OF SERVICE BY MAIL

I Charles LeGros, am a resident of the Richard J. Donovan Correctional Facility, in the county of San Diego, in the state of California. I am over the age of eighteen (18) years, and I am not a party to the enclosed action. My state prison address is

Charles LeGros
J-27329, F1-4-227
P.O. Box 799001
San Diego, Ca 92179-9001

On 4-8-08, I served the foregoing Petition For Writ of Habeas Corpus on the parties named herein below by placing a true copy thereof, enclosed in a sealed envelope, with the postage thereon fully paid, in the United States mail in a deposit box so provided at the prison facility, addressed as follows:

United States District Court
Office of the Clerk
880 Front Street, Suite 4290
San Diego, Ca 92101-8900

I declare under penalty of perjury of both state and federal law that the foregoing is true and correct and that this declaration was executed on 4-8-08 at San Diego, California.

/S/ Charles LeGros

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

2254 ✓ 1983
FILING FEE PAID
Yes ____ No ✓
IFP MOTION FILED
Yes ____ No ____
COPIES SENT TO
Court ✓ Pltfs ____

FILED
2008 APR 10 PM 3:53
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY

I (a) PLAINTIFFS

Mark Titch

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Hernandez, et al

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Mark Titch
PO Box 799001
San Diego, CA 92179
B-89549

ATTORNEYS (IF KNOWN)

'08 CV 0654 J WMc

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT (For Diversity Cases Only)

	PT	DEF		PT	DEF
Citizen of This State	☐1	☐1	Incorporated or Principal Place of Business in This State	☐4	☐4
Citizen of Another State	☐2	☐2	Incorporated and Principal Place of Business in Another State	☐5	☐5
Citizen or Subject of a Foreign Country	☐3	☐3	Foreign Nation	☐6	☐6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT
- ☐ 110 Insurance
- ☐ Marine
- ☐ Miller Act
- ☐ Negotiable Instrument
- ☐ 150 Recovery of Overpayment &Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153Recovery of Overpayment of Veterans Benefits
- ☐ 160 Stockholders Suits
- ☐ Other Contract
- ☐ 195 Contract Product Liability

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Eiectmant
- ☐ 240 Tort to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury-Medical Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/Accommodations
- ☐ 444 Welfare
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence Habeas Corpus
- ☒ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC881
- ☐ 630 Liquor Laws
- ☐ 640 RR & Truck
- ☐ 650 Airline Regs
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710Fair Labor Standards Act
- 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt. Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc.
- ☐ Security Act

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (13958)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS - Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reappointment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities Exchange
- ☐ 875 Customer Challenge 12 USC
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900 Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State
- ☐ 890 Other Statutory Actions

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appelate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A **CLASS ACTION** UNDER f.r.c.p. 23 **DEMAND $** Check YES only if demanded in complaint: **JURY DEMAND:** ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE April 10, 2008

~~SIGNATURE OF ATTORNEY OF RECORD~~

RMelly